



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Florida Sheriffs/Civil Service Systems

Sixty-six of Florida's 67 counties have elected sheriffs as their chief law-enforcement officers. Miami-Dade County has an appointed chief law-enforcement officer whose title is Director of the Miami-Dade Police Department. Sheriffs serve four-year terms,<sup>1</sup> and have county-wide jurisdiction that includes incorporated as well as unincorporated areas.

Section 14 of Art. III of the State Constitution provides:

By law there shall be created a civil service system for state employees, except those expressly exempted, and there may be created civil service systems and boards for county, district or municipal employees and for such offices thereof as are not elected or appointed by the governor, and there may be authorized such boards as are necessary to prescribe the qualifications, method of selection and tenure of such employees and officers.

The powers of the governing body of a county are set forth in s. 125.01, F.S. This power includes the authority, as provided in paragraph (u) of subsection (1) of s.125.01, F.S., to "[c]reate civil service systems and boards." Section 30.53, F.S., provides, in pertinent part, that "[t]he independence of the sheriffs shall be preserved concerning the...selection of personnel, and the hiring, firing, and setting of salaries of such personnel...."

A number of sheriffs have civil service systems established by the Legislature through special act, including: Alachua,<sup>2</sup> Baker,<sup>3</sup> Bay,<sup>4</sup> Brevard,<sup>5</sup> Broward,<sup>6</sup> Charlotte,<sup>7</sup> Citrus,<sup>8</sup> Clay,<sup>9</sup> Columbia,<sup>10</sup> Escambia,<sup>11</sup> Flagler,<sup>12</sup> Glades,<sup>13</sup> Hernando,<sup>14</sup> Indian River,<sup>15</sup> Lake,<sup>16</sup> Lee,<sup>17</sup> Leon,<sup>18</sup> Levy,<sup>19</sup> Madison,<sup>20</sup>

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<sup>1</sup> Section 1(d), Art. VIII of the State Constitution.

<sup>2</sup> Chs. 84-388 and 86-342, L.O.F.

<sup>3</sup> Ch. 2006-318, L.O.F.

<sup>4</sup> Ch. 84-309, L.O.F.

<sup>5</sup> Ch. 83-373, L.O.F.

<sup>6</sup> Ch. 93-370, L.O.F.

<sup>7</sup> Chs. 79-436, 86-349, and 89-508, L.O.F.

<sup>8</sup> Ch. 2001-296, L.O.F.

<sup>9</sup> Chs. 89-522 and 93-397, L.O.F.

<sup>10</sup> Ch. 2004-413, L.O.F.

<sup>11</sup> Ch. 89-492, L.O.F.

<sup>12</sup> Chs. 90-450 and 2000-482, L.O.F.

<sup>13</sup> Ch. 2003-311, L.O.F.

<sup>14</sup> Ch. 2000-414, L.O.F.

<sup>15</sup> Ch. 2002-355, L.O.F.

<sup>16</sup> Chs. 90-386, 93-358 and 2005-349, L.O.F.

<sup>17</sup> Chs. 74-522, 87-547, 95-514, and 2007-320, L.O.F.

<sup>18</sup> Ch. 83-456, L.O.F.

Manatee,<sup>21</sup> Marion,<sup>22</sup> Martin,<sup>23</sup> Monroe,<sup>24</sup> Okaloosa,<sup>25</sup> Okeechobee,<sup>26</sup> Orange,<sup>27</sup> Osceola,<sup>28</sup> Palm Beach,<sup>29</sup> Pasco,<sup>30</sup> Pinellas,<sup>31</sup> Polk,<sup>32</sup> St. Lucie,<sup>33</sup> Santa Rosa,<sup>34</sup> Sarasota,<sup>35</sup> Seminole,<sup>36</sup> and Walton<sup>37</sup> counties. The Bradford County Sheriff's Office currently does not have a career service system for its employees.

### Pinellas County Sheriff's Civil Service System

The Pinellas County Sheriff's Civil Service System is established by ch. 89-404, L.O.F., as amended by ch. 90-395, L.O.F. The sheriff's office previously had a personnel system pursuant to ch. 84-514, L.O.F., which was repealed by ch. 89-404, L.O.F.

### **Effect of Proposed Changes**

This bill amends ch. 89-404, L.O.F., as amended, the special act which prescribes the Pinellas County Sheriff's Civil Service System. The bill:

- deletes unnecessary intent language relating to collective bargaining;
- amends language which limits application of the act, specifically noting the exclusion of the general counsel, the associate general counsel, the director of human resources, the director of support services, the director of fiscal affairs, the public information coordinator, the director of labor relations, the jail medical director, the grants administrator, the sheriff's executive secretary and any person who enters the Florida Retirement System's Senior Management Service Class. According to the Pinellas County Sheriff's Office, this language does not change how these employees are treated under the act.<sup>38</sup>
- removes unnecessary language relating to ch. 447, F.S., from the characterization of the term "personnel" for purposes of the act;
- revises the designation of positions covered by the Classified and Unclassified Services to update classifications. According to the Pinellas County Sheriff's Office, this language does not change how these employees are treated under the act.<sup>39</sup>
- provides for the effect of participating in the Florida Retirement System's Senior Management Class;

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<sup>19</sup> Ch. 2007-290, L.O.F.

<sup>20</sup> Ch. 95-470, L.O.F.

<sup>21</sup> Ch. 89-472, L.O.F.

<sup>22</sup> Ch. 87-457, L.O.F.

<sup>23</sup> Ch. 93-388, L.O.F.

<sup>24</sup> Chs. 78-567, 89-410, 89-461, 97-345, and 98-507, L.O.F.

<sup>25</sup> Chs. 81-442, 85-472, and 90-492, L.O.F.

<sup>26</sup> Ch. 2006-338, L.O.F.

<sup>27</sup> Ch. 89-507, L.O.F.

<sup>28</sup> Chs. 89-516 and 2000-388, L.O.F.

<sup>29</sup> Chs. 93-367, 99-437 and 2004-404, L.O.F.

<sup>30</sup> Ch. 90-491, L.O.F.

<sup>31</sup> Chs. 89-404 and 90-395, L.O.F.

<sup>32</sup> Chs. 88-443, 98-516 and 2006-320, L.O.F.

<sup>33</sup> Ch. 89-475, L.O.F.

<sup>34</sup> Ch. 2002-385, L.O.F.

<sup>35</sup> Ch. 86-344, L.O.F.

<sup>36</sup> Ch. 77-653, 80-612, 88-451, and 97-376, L.O.F.

<sup>37</sup> Ch. 2007-319, L.O.F.

<sup>38</sup> Telephone conversation with Robert A. Gualtieri, Chief Deputy and General Counsel, Pinellas County Sheriff's Office on March 7, 2008.

<sup>39</sup> Telephone conversation with Robert A. Gualtieri, Chief Deputy and General Counsel, Pinellas County Sheriff's Office on March 7, 2008.

- provides for the sheriff's Certified Executive Staff. According to the Pinellas County Sheriff's Office, this language does not change how these employees are treated under the act.<sup>40</sup>
- provides an employee's acceptance into a pretrial diversion or intervention program as an additional cause for suspension or dismissal;<sup>41</sup>
- provides duties of the Civil Service Board regarding appeals, limiting their authority with regard to reductions in base pay to those for disciplinary or job performance reasons;
- extends to the Division of Administrative Hearings language which provides that the authority of the Civil Service Board does not include the establishment or deletion of categories of conduct;
- revises provisions relating to the disposition of appeals by adding a deadline of within 10 days of the conclusion of the appeals hearing, or receipt of the proposed recommended order from the Division of Administrative Hearings, whichever is greater, unless the parties agree to a longer period;
- revises a procedure regarding the timeframe for filing an appeal to: require the sheriff's designation of a person to accept appeals be in writing; specify—with regard to a five calendar day deadline—that the period will begin on the first day after receipt of the notice of personnel action; impose a 5 p.m. deadline; and place the burden to establish timely service on the employee;
- extends a civil liability immunity provision to certain persons "in their individual and official capacities" while taking actions pursuant to the provisions of the act;
- removes an unnecessary provision relating to ch. 447, F.S.; and
- renumbers various subsections.

The bill provides an effective date of upon becoming law.

#### C. SECTION DIRECTORY:

**Section 1:** Amends ch. 89-404, L.O.F., as amended by ch. 90-395, L.O.F., relating to the Pinellas County Sheriff's Civil Service System.

Section 1: Intent.

Section 2: Personnel of Pinellas County Sheriff; applicability of the act; authority of the sheriff.

Section 3: Classified and Unclassified Services; Certified Executive Staff; status of members of the Classified Service, Unclassified Service, and Certified Executive Staff.

Section 4: Permanent status; effect of rehire; extension of probation; status upon election or appointment of new sheriff.

Section 5: Effect of election or appointment of new sheriff on status of personnel.

<sup>40</sup> Telephone conversation with Robert A. Gualtieri, Chief Deputy and General Counsel, Pinellas County Sheriff's Office on March 7, 2008.

<sup>41</sup> Pretrial diversion, also called pretrial intervention, is a dispositional approach that offers persons charged with criminal offenses alternatives to traditional criminal court proceedings. If the diverted person successfully completes the conditions of their diversion process, charges are dropped.

Section 6: Members of Classified Service; certain members of the Certified Executive Staff; suspension, demotion, or dismissal only for cause.

Section 7: Creation and qualifications of the Civil Service Board.

Section 8: Duties and authority of the Civil Service Board.

Section 9: Appeals procedure.

Section 10: Settlements and precedent.

Section 11: Hearing procedure.

Section 12: Exemption from ch. 120, F.S.

Section 13: Members' Advisory Council.

Section 14: Sheriff to adopt rules and regulations for review of citizen complaints and other actions.

Section 15: Severability.

Section 17: Repeal of ch. 84-514, L.O.F., as amended.

Section 18: Effective date.

**Section 2**: Provides an effective date.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? January 25, 2008

WHERE? The *Gulf Coast Business Review*, a weekly newspaper published in Pinellas County.

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

The Economic Impact Statement provides that "[t]his bill is budget neutral and there are no anticipated costs with its implementation."

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

See, Drafting Issues, below.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### Drafting Issues

The bill makes various references to the "Florida Retirement System's Senior Management Service." The Division of Retirement has noted that this term should read "Senior Management Service Class."

At Section 2, the bill adds any person who enters the Senior Management Service Class to the group who is not subject to the sheriff's civil service system. The Division of Retirement has noted that this reference should be for any person who is eligible to participate in the Senior Management Service Class (SMSC), not just those who actually participate in that class reasoning that an employee who is eligible to participate in the SMSC could elect to withdraw from the FRS. Because the employee would be serving in a senior management position, it appears that such person also should be exempt from civil service protections.

The reference in the bill on line 89 to s. 121.055(1)(c), F.S., which refers to the eligibility of certain legislative staff to participate in the Senior Management Service Class, should be changed to s. 121.055(1)(b), F.S.

At Section 11, the bill attempts to extend civil liability to certain persons "in their individual and official capacities," while taking actions pursuant to the provisions of the Sheriff's Civil Service System Act. This provision may be unconstitutional under s.1, Art. 21 of the State Constitution, relating to access to courts, and should be removed.

##### Other Comments

The Division of Administrative Hearings has indicated that this bill has no fiscal or policy impact on its operations.

#### D. STATEMENT OF THE SPONSOR

The Pinellas County Sheriff's Office requires this local bill because their Civil Service Act has not been amended since 1990 and the proposed changes are necessary to reflect the current needs of the Sheriff's Office's operations.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES